

Revised 05/01 WDNV

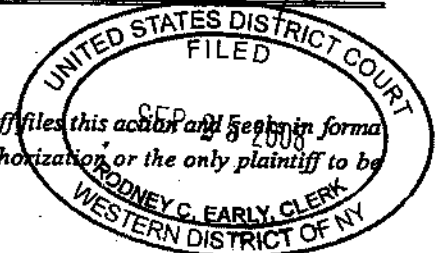
**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)**

08 CV 0717 *LR*

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: *If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization, or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.*



1. Marvin Looney

2. _____

-VS-

B. Full Name(s) of Defendant(s) NOTE: *Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.*

1. Anthony Porzio

4. _____

2. Commissioner, Police, Gibson

5. _____

3. City of Buffalo, NY

6. _____

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: *To list additional plaintiffs, use this format on another sheet of paper.*

Name and Prisoner Number of Plaintiff: Marvin Looney - 17726 - E-South-109

Present Place of Confinement & Address: Presently incarcerated at Erie County Holding Center, 40 Delaware Ave. Buffalo, NY 14202
upon Release address will be 234 Lathrop Street - Buffalo, NY 14211

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: Anthony Porzio

(If applicable) Official Position of Defendant: Police Officer, City of Buffalo, NY

(If applicable) Defendant is Sued in Individual and/or ☒ Official Capacity

Address of Defendant: Place of employment, - 74 Franklin Street
14203, City of Buffalo, NY Police Headquarters.

Name of Defendant: City of Buffalo, NY

(If applicable) Official Position of Defendant: Erie County,

(If applicable) Defendant is Sued in Individual and/or ☒ Official Capacity

Address of Defendant: Police

Name of Defendant: Commissioner of Police, City of Buffalo, NY

(If applicable) Official Position of Defendant: McCarthy Gibson

(If applicable) Defendant is Sued in Individual and/or ☒ Official Capacity

Address of Defendant: _____

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes _____ No ☒

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court (if federal court, name the district; if state court, name the county): ERIE, County
No other Law suits filed on This Action.
3. Docket or Index Number: _____
4. Name of Judge to whom case was assigned: _____
5. The approximate date the action was filed: _____
6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved: _____

Disposition (check the statements which apply):

Dismissed (check the box which indicates why it was dismissed):

- _____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- _____ By court for failure to exhaust administrative remedies;
- _____ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- _____ By court due to your voluntary withdrawal of claim;
- _____ Judgment upon motion or after trial entered for
- _____ plaintiff
- _____ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes _____ No ✓

If Yes, complete the next section. NOTE: If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case? _____

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved: _____

Disposition (check the statements which apply):

_____ Dismissed (check the box which indicates why it was dismissed):

_____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

_____ By court for failure to exhaust administrative remedies;

_____ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

_____ By court due to your voluntary withdrawal of claim;

_____ Judgment upon motion or after trial entered for

_____ plaintiff

_____ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|--------------------------|-------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | • <u>Excessive Force</u> | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You must include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).

Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) On April 22 2008
 defendant (give the name and position held of each defendant involved in this incident) Buffalo, Police Officer Anthony Porzio

did the following to me (briefly state what each defendant named above did): On date above I was ordered to the floor in hallway of building at 436 Walden Ave. by officer Paul Sobkowiak in which I proceeded to do Officer, Anthony, Porzio appeared at top of stair landing in the hallway as I was attempting to lay down as ordered by first officer Paul Sobkowiak, Officer, Anthony Porzio hit me in the head with a flashlight, blood is in hallway of landing I did nothing to resist, was taken to E.C.M.C hospital emergency

The constitutional basis for this claim under 42 U.S.C. § 1983 is: excessive use of force by Officer, Porzio, and

The relief I am seeking for this claim is (briefly state the relief sought): I feel that a Diversity Program would may be help him to stop abusing people he arrests who are of a different cultural background, Also suing for \$10,000.00 Pain, Suffering

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? Yes No If yes, what was the result? filed a complaint with Professional Standard division, 74 Franklin Street

Did you appeal that decision? Yes No If yes, what was the result? Have not received any information since individuals took my statement on, June 10, 2008.

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

A. SECOND CLAIM: On (date of the incident) CITY OF Buffalo

defendant (give the name and position held of each defendant involved in this incident) Is Responsible for Police OFFicer Conduct, who are under Their employment.

did the following to me (briefly state what each defendant named above did): The OFFicer is a employee of The City of Buffalo, who i feel are Responsible in some regard to his official action's while on The Job

The constitutional basis for this claim under 42 U.S.C. § 1983 is: failure to monitor Police OFFicers, who are known to be abusive toward minorities

The relief I am seeking for this claim is (briefly state the relief sought): OFFicer should be ordered to attend a Diversity program. Also I am suing in The amount of \$ 10,000. ^{repeated} dollars for pain + suffering, Headaches

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☐ Yes ☐ No If yes, what was the result? Have Filed a Report with Professional Standards - 74 Franklin St Headquarters

Did you appeal that decision? ☐ Yes ☐ No If yes, what was the result? Interviewed on complaint June 10, 2008, by Investigator (McLaughlin - LT-AT E.C.C.F.

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

I am seeking \$10,000.00 Damages To my head
also For Pain Suffering, Also a Diversity Program
for This OFFICER PORZIO who has a history
of abusing Minorities

Do you want a jury trial? Yes ☒ No ☐

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9-12-08
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.

Marius Laouy

Signature(s) of Plaintiff(s)

①

On April 13, 2008 i was arrested on St Louis St in Buffalo, Ny. I was charged with numerous charges upon a plea deal i was convicted of a misc B on May 20, 2008, charge was, 110. 220.03 Penal Law all other charges were dismissed concerning the docket number # 08M5221. in Judge, Keane CourtRoom in City Court on May 20 2008.

1. <Summary of Arrest Incident>

As i walked from between the walkway of houses on St Louis Street a police car was at the curb, I was told by Officer, Moran to put my hands upon the car in which i complied, Officer, Clark was running up the street from Walden Ave. toward Police car where i had placed my hands on the Patrol car of Officer. ~~XXXXXX~~ Moran.

Once Officer Clark reached the patrol car he proceeded to punch me in the face causing damage to my nose which was bleeding badly. I was punched for no apparent reason, after this incident i was arrested and taken to the Fillmore and Ferry street station, I was put in a conference room. while in the room, a LT, came and talked to me in regard to my arrest he asked me what happen, I stated that one of his Officer's punched me in the face for no apparent reason, He just stated, <dont be lieing on My Officer in a Rude and indignant manner.

(2)

I was taken downtown about a 1/2 Later while still bleeding from my nose, also my finger which i has injured Prior to my arrest. Officer, Clark took me to Erie County Holding Center to be Processed, during This time i was still bleeding badly.

Once i was processed i was sent upstairs to Erie County Holding Center's, Medical Doctor, he sewed up my injured finger, I also brought to his attention my nose, he examined it saw that it was bleeding at a good rate of flow, he discussed the issue with several staff members, He came back out of room and stated that i was being sent to Erie County Medical Center on Grider Street.

My eyes were also blackened and the right side of my nose was swollen, picture's of my booking will verifie my facial injuries.

I then was taken back down stairs in processing put in a holding room, some^{ONE} called the same Buffalo Police Officer who arrested me Officer, Clark back to The Holding Center, Once he got there he repeatedly Thanked the Sheriff deputy who called him i was put back in his custody which was very uncomfortable him being the one who punched me for no reason, I was Taken to Erie County Medical Facility emergency, Doctor looked at my nose stated that once the swelling went down i could have

③

a x Ray to determine the extent of The damage's While being held here at Erie County Holding Center i have Requested to see a specialist who deals with broken facial injuries.

While sitting in Ferry Street Precinct Officer Clark was aware of My Medical injuries. i also was in E.C.H.C. custody for atleast 2 hours when someone called Officer Clark back to The Holding Center to take me to E.C.M.C concerning My nose.

I am willing to sign a Medical Release form if need be, to verifie the injuries inflicted on Me by Officer, Clark. I was Taken back to Holding Center by Officer Clark.

Officer, Clark didnot appear at any of the hearing's pertaining to my arrest all charges were dropped except one which i was given 60 days for. Penal law 220.03 a B Misc.